

## Internal Revenue Service

Number: **201408020**

Release Date: 2/21/2014

Index Number: 305.00-00, 305.01-00,  
305.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:

CC:CORP:3

PLR-127630-13

Date:

November 07, 2013

### Legend

Taxpayer =

State A =

Exchange =

Date 1 =

Date 2 =

Dear :

This letter responds to your June 18, 2013 request for rulings under sections 301 and 305 of the Internal Revenue Code of 1986, as amended (the "Code"). The information received in that request is summarized below.

### FACTS

Taxpayer, a State A corporation, is registered as a closed-end management investment company as defined by the Investment Company Act of 1940, as amended. Taxpayer elected to be treated as a regulated investment company (a "RIC") under subchapter M

of Chapter 1 of the Code. Taxpayer regularly distributes its earnings and profits as required under section 852(a)(1).

Taxpayer has one class of common stock outstanding (the "Common Stock"), the shares of which are listed and publicly traded on the Exchange. Taxpayer has adopted a dividend reinvestment plan ("DRIP") that generally provides for the reinvestment of its distributions on behalf of the holders of its Common Stock, unless a stockholder affirmatively elects to receive cash.

Subject to the approval of Taxpayer's Board of Directors, Taxpayer intends to pay one or more future dividends and/or future "spillback" dividends (dividends made after the close of the taxable year that relate to that taxable year pursuant to an election under section 855) with respect to its Common Stock for its taxable years ending on Date 1 and Date 2, in the form of cash, subject to the "Cash Limit" (as defined below), or Common Stock, at the election of each of its stockholders. Except where otherwise indicated, references herein to "a Special Dividend" or "the Special Dividend" refer to each of the dividends referred to in the preceding sentence, and references to the "Special Dividends" refer to all of the Special Dividends.

The total amount of cash payable in a Special Dividend will be limited to not less than 20 percent of the total value of the Special Dividend. In no event will the total amount of cash available be less than 20 percent of the total value of a Special Dividend. Taxpayer expects to declare a Special Dividend using an election mechanism substantially similar to that described below.

Taxpayer will transmit to each holder of Common Stock an election form relating to a Special Dividend. Each stockholder may elect, by the election deadline, to receive his, her, or its portion of the Special Dividend in the form of (a) cash (the "Cash Option"), or (b) Common Stock of equivalent value (the "Stock Option"). If a stockholder fails to make a valid election by the election deadline, that stockholder will be deemed to have made an election to receive 100 percent stock.

The total number of shares of Common Stock to be issued in a Special Dividend will equal (i) the total amount of the Special Dividend minus the amount of cash payable pursuant to elections under the Cash Option (but subject to the "Cash Limit," as defined below), divided by (ii) the average trading price of a share of Common Stock on the Exchange as of the close of trading during a three-business-day period ending on a date that is as close as possible to the dividend payment date, but that is sufficiently in advance of that date to allow Taxpayer to determine the number of shares of Common Stock that it will issue and distribute in the Special Dividend (the "Average Trading Price.") Although the calculation of the number of shares of Common Stock to be received by any stockholder will be determined as close as practicable to the dividend payment date, the value of a share of Common Stock may change between the time that the Average Trading Price is determined and the dividend payment date. In that

event, the total value of the shares of Common Stock actually distributed in the Special Dividend may not be equal to the amount of cash that the stockholders electing to receive such shares would have received if those stockholders had elected to receive all-cash distributions.

Although each stockholder will have the option to elect to receive cash in lieu of Common Stock for the stockholder's entire entitlement under a Special Dividend, Taxpayer intends to limit the aggregate amount of cash to be distributed in a Special Dividend to not less than 20 percent of the Special Dividend (such amount, the "Cash Limit"). Any cash paid in lieu of fractional shares of Common Stock will not count towards the Cash Limit. In no event will the total amount of cash available be less than 20 percent of the total value of a Special Dividend. Thus, Taxpayer may pay more than 20 percent of a Special Dividend in cash.

If, for any Special Dividend, the total number of shares of Common Stock for which a cash election is made ("Cash Election Shares") would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Limit, then the entire portion of such Special Dividend that is allocable to such Cash Election Shares will be paid in cash.

If the number of Cash Elections Shares would result in the payment of cash in an aggregate amount that is greater than the Cash Limit, then holders of Cash Election Shares will receive their respective portions of such Special Dividend on their Cash Election Shares as follows:

- a. in cash on each stockholder's Cash Election Shares equal to the proportion that such stockholder's Cash Election Shares bear to the total Cash Election Shares of all stockholders, multiplied by an amount equal to the Cash Limit; plus
- b. in shares of Common Stock, based on the Average Trading Price, as to the remainder.

As a result, if too many stockholders elect to receive a Special Dividend in cash, a holder of Cash Election Shares will instead receive a pro rata amount of cash, but in no case less than 20 percent of the stockholder's entitlement under a Special Dividend in cash.

With respect to any stockholder participating in the DRIP, the DRIP will apply to a Special Dividend only to the extent that, in the absence of the DRIP, the stockholder would have received the distribution in cash.

## RULINGS

Based solely on the information provided and the representations made, we rule as follows:

1. Any and all cash and Common Stock distributed in each Special Dividend by Taxpayer will be treated as a distribution of cash and property with respect to its stock to which section 301 applies and not as a distribution to which section 305(a) applies. Sections 301 and 305(b)(1).
2. The amount of any distribution of Common Stock received by any stockholder who receives Common Stock in a Special Dividend will be considered equal to the amount of money which could have been received instead by such stockholder. Sections 1.305-1(b)(2) and 1.305-2(b), Ex. 2.

#### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Special Dividends under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the Special Dividends that is not specifically covered by the above rulings. In particular, no opinion is expressed with regard to whether Taxpayer qualifies as a RIC under subchapter M of the Code or whether the distributions made pursuant to the ruling will satisfy the "required distribution" requirement under section 4982(b)(1), as modified by section 852(c)(2).

#### PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Marie C. Milnes-Vasquez  
Chief, Branch 4  
Office of Associate Chief Counsel (Corporate)

cc: